

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the matter of:)	Docket No. HWCA 96/97-3012
)	
PHIBRO-TECH, INC.)	
8851 Dice Road		CONSENT AGREEMENT AND
Santa Fe Springs, CA 90670)	ORDER
)	
)	
)	
Respondent.)	

1. Introduction

On or about November 26, 1996, the Department of Toxic Substances Control (hereinafter "the Department") issued an Enforcement Order pursuant to Health and Safety Code (hereinafter "the HSC") § 25187 against Phibro-Tech, Incorporated, (hereinafter "Respondent") for alleged violations of the HSC at its facility at 8851 Dice Road, Santa Fe Springs, California, 90670 (hereinafter "the facility"). On or about February 12, 1998, the Department issued a Compliance Evaluation Report (hereinafter "Inspection Report") alleging two additional violations of the HSC. The Department and Respondent now settle the Enforcement Order and Inspection Report on the terms set forth in this Consent Agreement and Order (hereinafter "Agreement and Order").

2. Complaint

The Enforcement Order in this case (attached as Exhibit A) alleges that Respondent violated provisions of the Hazardous Waste Control Act (hereinafter "the HWCA"), HSC §§ 25100 et seq., and HWCA regulations (California Code of Regulations, Title 22, Division 4, hereinafter "Title 22") with respect to its hazardous waste operations at the facility, and orders certain corrective action. The subsequent Inspection Report, a copy of which is attached as Exhibit B hereto, also alleges that Respondent violated the HSC, and demands corrective action.

3. Settlement of Disputed Claim

The parties enter into this Agreement and Order pursuant to a compromise and settlement of disputed claims for the purpose of avoiding prolonged and complicated litigation and furthering the public interest. For the purposes of this Agreement and Order, Respondent does not admit the allegations made in the Enforcement Order and Inspection Report and/or Complaint. Solely for the purpose of any action instituted by the Department against Respondent within three (3) years following the date Respondent signs this Agreement and Order pursuant to the Hazardous Waste Control Act, Health and Safety Code 825186, Respondent admits the following allegations:

Enforcement Order ¶ 2.1.6 for manifests 9363735, 9428316 and 92305251 only; ¶ 2.1.7 with respect to copper cake only; ¶ 2.1.9; ¶ 2.1.10; Inspection Report Counts I and 11.

4. Waiver of Hearing

By signing this Agreement and Order, Respondent waives its right to a hearing.

5. Civil Penalty and Administrative Costs

Respondent agrees to pay the Department \$48,000 in civil penalties on or before ^{December} November 30, 1999. Respondent shall make its payment payable to the Department of Toxic Substances Control and shall include on the face of the payment the docket number for this proceeding. Payment shall be mailed to:

Department of Toxic Substances Control
Accounting Office
400 P Street, 4th Floor
Sacramento, California 95812-0806.

A copy of the check shall be sent simultaneously to:

Pearl Lattaker, Deputy Attorney General
300 South Spring Street, 11th Floor North
Los Angeles, CA, 90013

James McCammon, Unit Chief
Department of Toxic Substances Control, Region 3
1011 North Grandview Avenue
Glendale, California 91201.

6. Corrective Action

As a condition of this Agreement and Order, Respondent shall do the following:

6.1. Effective immediately, Respondent shall continue

to maintain operational procedures designed to prevent the production of air emissions of uncontrolled emissions of uncontrolled ammonia toxic mists, fumes, dust or gases as required under its Hazardous Waste Facility Permit, §§ III, E(1), F(1) (b) and K(1) (c)(2). Respondent shall also prevent the production of uncontrolled ammonia toxic mists, fumes, dust or gases, that emanate from any wastewater at its facility.

6.2. Effective immediately, Respondent shall not discharge waste waters to the sewer that contain hazardous waste levels of any chemical substance without written approval from the Department for such discharge. Respondent reserves the right to contest the Department's jurisdiction over wastewater discharges to sewer systems. If Respondent prevails in a contest of the Department's jurisdiction in any future proceeding, including but not limited to a proceeding to enforce this Agreement and Order, none of Respondent's discharges to sewer systems shall be deemed to be in violation of this Agreement and Order. Notwithstanding this paragraph, Respondent is not relieved from complying with any applicable law with respect to discharge to sewers.

6.3 Effective immediately, Respondent shall not store hazardous waste at an unauthorized point. Respondent **shall** store

hazardous waste in containers only in its permitted hazardous waste storage area ERS-1 and ERS-2 as shown on the facility map. Effective immediately, Respondent shall manage "copper cake" as hazardous waste and shall **follow** all regulatory requirements for management and handling of this waste, unless Respondent meets the requirements of managing this material as excluded recyclable material. At a minimum, Respondent shall not store hazardous waste in open containers, or in containers that are not marked with required labels, and shall not store hazardous waste outside permitted hazardous waste storage areas.

6.4 Effective immediately, Respondent shall ensure that all partially or fully open regulated hazardous waste tanks have sufficient freeboard of 24 inches. Respondent shall inspect all such tanks daily, and note inspection observations in a log, to ensure there is sufficient freeboard of 24 inches.

6.5 Within fourteen (14) days of the date of this Agreement and Order, Respondent shall submit a list of regulated hazardous waste storage and treatment tanks that have partially open tops or open tops that are not equipped with working "high level" alarms or other devices that help prevent overfill. Within thirty (30) days, of the date of this Agreement and Order, Respondent shall install overfill prevention devices compliant with 22 C.C.R. §66264.194 on all regulated hazardous waste tanks that have partially open tops or open tops. These devices

should be activated when the volume of the contents of the tanks reaches either the design capacity of the tank or the required freeboard level, whichever is less. Within thirty (30) days of the date of this Agreement and Order, Respondent shall submit to the Department a copy of the specifications for the devices required by the above compliance requirements.

6.6. Effective immediately, Respondent shall cease storing, transferring, loading or unloading hazardous waste at any location where the secondary containment is inadequate to prevent hazardous waste from entering the soil. Within thirty (30) days of the date of this Agreement and Order, Respondent shall certify that it has resurfaced the hazardous waste storage areas with an impermeable seal, and shall note any cracks in a daily inspection log for the tank storage areas.

6.7 Effective immediately, Respondent shall keep all monitoring wells closed and locked except when sampling wells.

7. Submittals

All submittals from Respondent pursuant to this Order shall be sent to:

Florence Gharibian
Toxic Substances Control Program
1011 North Grandview Avenue
Glendale, CA 91201

8. Communications

All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by a Section Chief, Department of Toxic

Substances Control, or his/her designee. No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

9. Department Review and Approval

If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Agreement and Order fails to comply with the corrective action requirements or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10. Compliance with Applicable Laws

Respondent shall carry out this Agreement and Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

13. Site Access

Access to the site shall be provided at all reasonable **times** to employees, contractors, and consultants of the

Department, and any agency having jurisdiction. Nothing in this Agreement and Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representative shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating **logs**, and contracts relating to regulated hazardous waste areas of the Site; reviewing the progress **of** Respondent in carrying out the terms of this Agreement and Order; and conducting such tests as the Department is authorized to conduct under the HSC. Respondent shall permit such persons **to** inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Agreement and Order.

12. Sampling, Data, and Document Availability

Respondent shall permit the Department and its authorized representative to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Agreement and Order. Respondent shall allow the Department and its authorized representatives to take duplicates

of any samples collected by Respondent pursuant to this Agreement and Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Agreement and Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Agreement and Order. If the Department requests that some or all of these documents be preserved for a longer period **of** time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction.

13. Government Liabilities

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Agreement and Order, nor shall the State of California be held as a party to any contract entered into **by** Respondent or its agents in carrying out activities pursuant to the Agreement and Order.

14. Additional Enforcement Actions

By issuance of this Agreement and Order, the Department does not waive the right to take further enforcement actions for

violations that have not been alleged in the Enforcement Order or Inspection Report.

15. Incorporation of Plans and Reports

All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Agreement and Order are incorporated in this Agreement and Order upon approval by the Department.

16. Extension Request

If Respondent is unable to perform any activity or submit any document within the time required under this Agreement and Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for delay.

17. Extension Approvals

If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

18. Penalties for Noncompliance

Failure to comply with the terms of this Agreement and Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as

provided by HSC section 25188 and other applicable provisions of law.

19. Parties Bound

This Agreement and Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement and Order.

20. Authority to Enter Agreement and Order

Each signatory to this Agreement and Agreement and Order certifies that he or she is fully authorized by the party he or she represents to enter into this Agreement and Agreement and Order, to execute it on behalf of the party represented and legally to bind that party.

21. Integration

This Agreement and Agreement and Order constitutes the entire agreement between the parties and may not be amended or supplemented except as provided for herein. This Agreement may be modified by written consent of the parties in writing.

22. Counterparts

This agreement may be executed in counterparts or on separate signature pages, each of which shall be deemed an original, but all of which together constitute one and the same agreement.

Dated: DEPARTMENT OF TOXIC SUBSTANCES CONTROL

12/27/099 By: Original signed by Florence Gharibian

Dated: PHIBRO-TECH

12/27/99 By: Original signed by Thomas L. Moran

Approved as to Form and Content

Dated: 12/30/99 BILL LOCKYER, Attorney General
of the State of California

THEODORA BERGER,
Assistant Attorney General

PEARL LATTAKER,
Deputy Attorney General

By: Original signed by Pearl Lattaker
PEARL LATTAKER
Attorneys for DTSC

Dated: November 4, 1999 PAUL, HASTINGS, JANOFKY & WALKER LLP
By: Original signed by Gordon Hart
Gordon Hart

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